

## THE CITY CHARTER ADVISORY COMMITTEE

Thursday, May 5, 2011 – 7:00 p.m.

Eileen Dondero Foley Council Chambers

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Present: Assistant Mayor Novelline Clayburgh, Chair; Councilor Coviello; Joshua Cyr; John O’Leary; Peter Loughlin; Robert Sullivan, City Attorney; and Kelli L. Barnaby, City Clerk

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### **I. Call to Order**

Assistant Mayor Novelline Clayburgh called the meeting to order at 7:00 p.m. She announced that this evening the Committee will act upon the remaining items on the Listing of Suggested Amendments.

### **II. Acceptance of Minutes – April 19, 2011**

**Peter Loughlin moved to accept and approve the City Charter Advisory Committee minutes of the April 19, 2011 meeting. Seconded by Councilor Coviello and voted.**

### **III. Public Comment Session**

Jerry Howe, Police Commissioner said one of the issues the Committee has been considering and received public input on through the public comment sessions and public hearings is the abolishment of the Police and Fire Commissions. Also, at the last meeting the Committee asked City Attorney Sullivan to draft a memorandum regarding removing contract negotiations from the respective Police and Fire Commissions and turning it over to another entity to be determined in the future. He expressed concern about doing that especially with the grievance process. He stated that grievances in the Police Department are addressed in the contracts that have been negotiated. He said in the past changes have been made and he cited the situation regarding flaggers versus uniform police officers violated the contracts that were presently in place. (If the change that the City Attorney drafted regarding grievances, and that procedure is changed according to the wording, he feels it is a violation in the contracts.) Commissioner Howe said this is an issue that the Committee needs to consider when making their final recommendation to the City Council.

Richard Gamester, Fire Commissioner said it was stated at the last meeting by someone that the Committee was enacted to review items brought forward from individuals. (He said the Committee has decided not to discuss the abolishment of the Police and Fire Commissions but Committee has lessened the scope to an item inside the powers of both those Commissions.) Commissioner Gamester said he does not feel that this issue was in the Committee’s scope of why they were originated and the item was not supplied by any person or did it appear on any list that he was aware of. He also indicated that he agrees with Commissioner Howe on the grievance procedure.

Ann Walker, School Board Vice Chair read a letter from School Board Chair Mitchell Shuldman outlining 3 items they wish the Committee to consider. They are as follows:

- In recent years, the Portsmouth School Board has had to fill vacancies when a member has been unable to complete his/her four year term. The Charter requires the City go back to the original election. If there is no one eligible from that election, filling the vacancy has been left to the discretion of the Board. The Board would ask that language be included to say if there is no one eligible from the original election, then the candidates from the more recent election are used. The Board is in agreement that it is best to have someone on the Board who reflects some level of confidence by the electorate, if only by the simple fact that the person ran for the seat and received votes. If no one is willing or eligible to serve, the Board would continue to have its discretionary options.
- Clarify the language in the Charter that the School Board has authority to negotiate and agree upon the compensation and contract of the Superintendent of Schools.
- Include language to appoint a School Board representative to be a member of the 10-year Charter Commission.

Assistant Mayor Novelline Clayburgh asked for further speakers, with there being none she closed the Public Comment Session.

#### **IV. Discussion of Listing of Amendments**

Joshua Cyr said we should discuss what we want to send back to the City Council. He feels from the charge it is not up to the Committee to consider how many items are brought forward to the City Council as a recommendation. He stated it is the decision of the City Council how many items they wish to bring forward.

Assistant Mayor Novelline Clayburgh said she would like to provide the City Council with the entire list of amendments as a reference.

Councilor Coviello said the Committee should prioritize items for the City Council to consider. He feels the report to the City Council should include a statement from City Attorney Sullivan regarding the need to narrow the scope based on an amendment process versus a revision.

#### **Reference #2 – Policy on elected board members taking city jobs**

**John O’Leary moved that an amendment to the Charter prohibiting members of the City Council or School Board from becoming an applicant for a City job so that in order for any of these individuals who might be an elected official to apply for a job that would first have to resign from their elected position and further that applicant would be prohibited from being eligible for an appointment to complete an unexpired term until the completion of the next election cycle. Seconded by Councilor Coviello.**

Mr. O'Leary said the Committee discussion that elected officials have in the past applied may and have been hired as a City employee and once they are hired then they have to give up their elected position. If a person wants to apply for a job they have to give up their elected position so that all applicants are on a level playing field. Mr. O'Leary stated the second aspect of it is just so we don't have to deal with some scam of someone resigning the position and then frankly being appointed back to their own position. He said he has included the provision that they not be eligible to be appointed to an unexpired term until the completion of the next election cycle.

Councilor Coviello said he agrees with the second part of the motion however, he would like to see some time period and it doesn't have to be a year. He said an elected official should not be able to apply for a job that is opened even if they resign their position; they are not on a level playing field. He stated that you give up some rights in being an elected official. You give up some privacy rights; you should give up the notion that you might have a fast track to a job. Councilor Coviello stated that as an elected official you should not be able to resign and apply for a job that is open. The protection of the appearance of in priority is more important than the protection of a potential good employee. He recommended adding language that states after you resign you can't apply for a position with the City for "X" number of days, whatever the Committee feels comfortable with. In addition, he asked why we did not include all the elected bodies like the Fire and Police Commissions.

Mr. O'Leary said he would consider adding to the motion to say any elected official.

Mr. Cyr feels that setting time periods is beyond the scope of this Committee.

Councilor Coviello said the City Council will wonder if the Committee had this discussion or will infer, and if we have not had the discussion then it is going to be for Assistant Mayor Novelline Clayburgh and himself inferring what the Committee meant and we don't have to do that with discussions.

Mr. O'Leary asked how the aspect will work. City Attorney Sullivan said his perception of how this will work is that this Committee will make a recommendation in a general way to the City Council. If the City Council likes the general concept and wants to move ahead, the Council would then instruct that a specific amendment be drafted. City Attorney Sullivan reported if the specific amendment is drafted and the City Council likes it and wants to precede further, the City Council will then set the required public hearing on that specific amendment which has to occur prior to the election.

Assistant Mayor Novelline Clayburgh asked City Attorney Sullivan how exactly this recommendation should be worded for their report back to the City Council.

City Attorney Sullivan said the Committee should recommend that the Charter be amended so that no elected official will be eligible for employment with the City of Portsmouth during the term they are officially serving.

Peter Loughlin said that is different from what Mr. O'Leary suggested. Mr. O'Leary said that is some what different, and the fact is that he said the next election cycle. If someone is on a 4 year term and this happened during their first year what he said was after the next election cycle they would be eligible. He understands the City Attorney saying not until the completion of the term they were elected for. In that situation, it is general enough so that the City Council could probably make a determination with regards to what aspect they want to deal with. He said the intent is that we don't want to leave it open so that someone can be appointed to the term that they had resigned to apply for a position.

Mr. Loughlin said he agrees with that part of it. He said he is not as comfortable with the fact that somebody could not resign. He said some unintended consequences is that some family has a reversal of fortune and someone is on the School Board in their first year and a spouse loses a job and they have a chance to get a job in the School Department or Public Works Department and they are banned for the next 3 years from doing that.

Councilor Coviello suggested that they tell the City Council that there was debate about how long and move forward. He also said the discussion should be at the City Council level.

Mr. Loughlin said we think the City Council should consider an amendment to the Charter which would restrict the ability of a sitting elected official to apply for a job with the City during their term.

City Attorney Sullivan said he could draft an amendment similar to what was stated by Mr. Loughlin.

**Motion passed.**

**Reference #4 – Hiring new employees who are elected officials**

*No action required, addressed in Reference #2.*

**Reference # 7 – Stagger the City Council elections in a manner that is similar to the School Board**

*Mr. O'Leary said that there is no support for this so he will withdraw the item as a suggested amendment. The Committee agreed by consensus.*

**Reference #33 – Change terms of City Council members from 2 years to 3 years**

Assistant Mayor Novelline Clayburgh stated that she brought this item forward and outlined her reasons for the suggested amendment. She indicated that the first year of serving the City Council you are learning the process and elements of the position and then you need to start thinking about running again because it is only a two year term. She informed the Committee that concerns have been brought to her attention relative to an election taking place during a national election cycle.

**Assistant Mayor Novelline Clayburgh moved that the City Council term of office be three years instead of two years. Seconded by Peter Loughlin for discussion purposes.**

Mr. Loughlin said he does not agree with the proposed three year term. He said his understanding with elections the Secretary of State will not allow any item on a ballot during a State and/or Federal Election under any circumstances.

Councilor Coviello said people at the national level have discussed how elections costs are getting out of control and the most recent national election was the most expensive in history. He does not feel changing the term of the City Council will change the cost involved in running for election.

**On a voice vote 1-4, motion failed to pass with Assistant Mayor Novelline Clayburgh voting in favor.**

**Reference #17 – Change Terms of Fire/Police Commission and School Board members from 4 years to 2 years**

**Councilor Coviello moved to amend the term of the Fire and Police Commissions and School Board from four year terms to two year terms. Seconded by Mr. O’Leary.**

Councilor Coviello said he feels moving from a four year to a two year term will get more people involved in serving because a four year term is a long term commitment. He said there are plenty of people interested in serving on the School Board but the four year term is a concern for them.

Mr. Loughlin and Mr. O’Leary expressed concern and said they do not feel comfortable with the change.

Mr. Cyr said he doesn’t have an opinion on this issue.

Assistant Mayor Novelline Clayburgh said she would not support the motion. She said four year terms are a long standing item for the School Board. She said the members like the terms as is.

Councilor Coviello would like to suspend the rules in order to allow members of the Commissions and School Board address the Committee on this matter.

*The Committee agreed to allow members of the Commissions and School Board to come forward and address the issue.*

Police Commissioner Howe said he supports the four year terms. He stated that there is a tremendous amount of details with the Board and Commissions that you are required to know. He said the City Council has a larger body which makes it easier.

Fire Commissioner Gamester said he supports the four year terms. He said with the City Council you had 8 incumbents and 15 others that ran in the last election. He stated that maybe there are not other people running for the Police and Fire Commissions because the residents are happy with those currently serving. Commissioner Gamester did indicate that there needs to be more communication between the Council and the Commissions.

Police Commissioner Golumb said when he ran four years ago there was a great deal of interest in the Police Commission with five candidates running. He said there is so much information to absorb as a Commissioner that it takes three years to learn the complexities of the position.

School Board Vice Chair Walker spoke in support of the four year terms and said that the learning curve on the School Board is difficult with the first few years learning the in and out's of the position.

**On a voice vote 1-4, motion failed to pass with Councilor Coviello voting in favor.**

**Reference #22 – All union contracts must be passed by 2/3 vote**

**Councilor Coviello moved that the Committee not recommend this item. Seconded by Mr. Cyr and voted.**

**Reference #26 – Section 6.3H – Student Member of School Board – add the teacher representatives to this section or remove section entirely**

*School Board Vice Chair Walker reported to the Committee that the School Board has withdrawn this item for consideration. No vote required.*

**Reference #28 – Section 6.3H – Student Member, School Board Employee Representative, School Administrative Unit #50 – add positions to the Charter**

**The Committee agreed via consensus to not recommend amendment.**

**Reference #30 – Clarify the language in the Charter that the School Board has authority to negotiate and agree upon the compensation and contract of the Superintendent of Schools**

City Attorney Sullivan said the process currently is that in addition to collective bargaining, contracts for all major department heads come to the City Council for approval. The amendment would be to have the agreement of the Superintendent of Schools approved by the School Board rather than the City Council.

Assistant Mayor Novelline Clayburgh asked that School Board Vice Chair Walker come forward and address this item.

School Board Vice Chair Walker said the School Board would like to determine and approve everything prior. She said the School Board knows that the Council has the final say. The City Attorney said the current process is that the School Board does approve everything prior and then brings the contract to the City Council.

Councilor Coviello said he believes that the School Board is looking to have both the School Board and City Council agree upon the language in the contract for it to be approved.

School Board Vice Chair Walker said that the City Council makes changes to the language. City Attorney Sullivan said that is not accurate, the City Council refuses to approve the contract. Ms. Walker said the concern was that with our current Superintendent that arrangements were made with compensation and the whole package was put together and then it was changed. Mr. O'Leary said the City Council probably did not approve the contract and raised the concerns they had but the Council would not change the contract they would send the School Board back with the concerns. Ms. Walker said there were negotiations done outside of the entire Board and only a few of the Board members were involved. City Attorney Sullivan said he is sure that Ms. Walker is correct, that discussions took place outside of the School Board but the City Council didn't actually change that contract. He said in all these matters the City Council has never negotiated with anyone to amend the contract. City Attorney Sullivan stated what the Council has done on a great many occasions is suggested or voted that they would not approve a contract because of a particular problem or an issue they didn't agree with. Councilor Coviello said that the Superintendent cannot make an amendment without going back to the School Board. City Attorney Sullivan said that is correct.

City Attorney Sullivan stated what Ms. Walker has said and what is happening is the same thing. The Charter language could be clearer. If the Committee wants the process as it occurs, language could be formulized that contracts of major department heads be forwarded to City Council for approval. The Council vote is limited to approval or disapproval and that no contract can be presented to the Council without the agreement of the School Board, Fire Commission or Police Commission.

Councilor Coviello said that the mechanics are currently in the Charter now.

Mr. O'Leary moved to table this item for the time being. No second received.

Councilor Coviello asked if there is an opportunity and there are not many recommendations, the Committee would suggest to the City Council that clarifying language could be added to the Charter regarding this matter. Mr. O'Leary said he agrees with Councilor Coviello.

City Attorney Sullivan stated the amendment would be to amend the City Charter to reflect the current practice with regard to approval of major department head contracts without the prior approval of the School Board, Fire or Police Commissions.

**Councilor Coviello moved to amend the Charter to recognize current practices in union negotiations. Seconded by Mr. Loughlin.**

Mr. Loughlin said that the School Board, Police and Fire Commissions would still be the one to hire the individual for the job and that would not change with this amendment. City Attorney Sullivan said that is correct.

**The motion passed on a unanimous voice vote.**

At 8:05 p.m., Assistant Mayor Novelline Clayburgh declared a brief recess. At 8:10 p.m., Assistant Mayor Novelline Clayburgh called the meeting back to order.

**Reference #31 – Include language to appoint a School Board representative to be a member of the 10-year Charter Commission**

City Attorney Sullivan said he would not recommend the suggested amendment because there is no 10-year Charter Commission therefore, you cannot put a School Board member on it.

Assistant Mayor Novelline Clayburgh said she would like to see a School Board member on the Committee to review the Charter.

**Mr. O’Leary moved to not approve the recommendation. Seconded by Councilor Coviello and voted.**

**Reference #32 – Remove Fire & Police Commissioners from the negotiation process**

Assistant Mayor Novelline Clayburgh said City Attorney Sullivan has provided a memorandum regarding this matter.

City Attorney Sullivan said it is not necessary to be specific with Charter language this early in the process. He did indicate that the Committee wanted to see specific language in regards to this matter and therefore, he provided that language in his memorandum before the Committee.

City Attorney Sullivan stated that he added into the Charter the existing provision on the Department of Negotiation and Administration of All Collective Bargaining Agreements. He said they would have to work in cooperation with every department but it would be that department which is really Human Resources. He said that department would determine when a contract should be submitted to the City Council and that would be the biggest change. Under the current process the Commissions or School Board determines when a contract would be brought forward to the City Council. He also indicated that he went through the powers of the Charter for the Police and Fire Commissions and proposed to delete anything that is inconsistent with that provision.

**Mr. O’Leary moved that the memorandum presented by the City Attorney be forwarded to the City Council with the recommendation that this amendment be considered by them. Seconded by Mr. Loughlin.**



Mr. O'Leary thanked the City Attorney for his efforts in this regard. He said he has dealt with other City officials on this matter and consider the recommendation by the departments involved in the process and asked if he is willing to address the concern raised by Commissioner Howe.

City Attorney Sullivan said Commissioner Howe's issue is well taken. He said if this Charter amendment becomes part of the Charter and there is an existing collective bargaining agreement that has a different grievance procedure in it, his opinion is the collective bargaining agreement would continue to be the valid grievance procedure until that collective bargaining agreement reached its termination. He further stated that any future collective bargaining agreements would need to be drafted with this Charter provision in mind.

Councilor Coviello stated that it is important to bring this to the City Council for discussion. He will support the motion however, the more he thinks about this he does not feel this will solve the problems in negotiations. He said there maybe issues with communications between the board and commissions. He does not feel it will solve the large problems with the negotiations.

Mr. O'Leary said a case has been made that the Commissions are important in the City. He stated that the proposal to abolish the Police and Fire Commissions was to deal with the negotiation process. He further stated that the Commissions put in hundreds of hours and the residents benefit from that.

Discussion followed on contracts and the negotiation process.

**On a voice vote motion passed with Mr. Cyr voting opposed.**

Assistant Mayor Novelline Clayburgh said that the Committee has completed the process and thanked the Committee for all of their hard work.

## **V. Miscellaneous/Unfinished Business**

City Attorney Sullivan spoke to the number of amendments that should appear on a ballot to avoid the revision process. He feels that the City Council should not consider more than 4 amendments to be placed on the ballot.

City Clerk Barnaby announced the rebroadcasting dates and times of this meeting for the public to view.

## **VI. Adjournment**

**At 8:45 p.m., Mr. O'Leary moved to adjourn. Seconded by Mr. Loughlin and voted.**

Respectfully submitted by:

Kelli L. Barnaby, CMC/CNHMC  
City Clerk